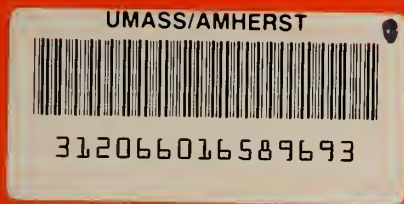


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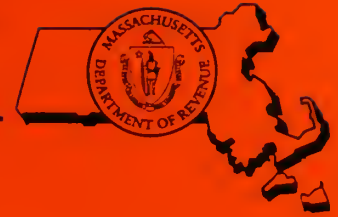
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Massachusetts Department of Revenue Division of Local Services

Mitchell Adams, Commissioner Joseph J. Chessey, Jr., Deputy Commissioner



Motor Vehicle & Trailer Excise Manual

Prepared by the Property Tax Bureau, June 1997

Motor Vehicle & Trailer Excise Manual

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The Assessment Process

1

MOTOR VEHICLES SUBJECT TO EXCISE

Pursuant to Ch. 60A of the Massachusetts General Laws, every motor vehicle and trailer* *registered* in the Commonwealth is subject to the motor vehicle excise unless expressly exempted. See Chapter 2 for a listing and discussion of each exemption.

DEFINITION OF "MOTOR VEHICLE"

The term "motor vehicles" is defined in Ch. 90 §1. The statute broadly defines motor vehicles as "all vehicles constructed and designed for propulsion by power other than muscular power including such vehicles when pulled or towed by another motor vehicle." The statute, however, proceeds to limit this definition by excluding the following:

- trains and trolleys, including trackless trolleys.
- vehicles used for other purposes than transportation of property and incapable of being driven at a speed exceeding 12 miles per hour and
 1. used exclusively for the building, repair and maintenance of highways or
 2. designed especially for use elsewhere than on the traveled part of ways.
- wheelchairs owned and operated by invalids and operated or guided by a person on foot.
- motorized bicycles.

BASIS OF THE EXCISE ASSESSMENT

The motor vehicle excise is imposed for the *privilege of registering* a motor vehicle. Registering a motor vehicle automatically triggers the assessment of the excise.

PERIOD OF ASSESSMENT

Motor vehicle registrations are issued for either one or two years. The following registrations are issued for *one* year:

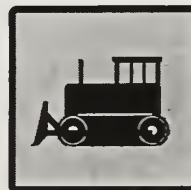
1. Vanity plates.
2. Section 5 plates. (Section 5 plates are those registration plates authorized by Ch. 90 §5 and which may be issued to automobile manufacturers, dealers, repairmen, farmers, owner-contractors, transporters and harvesters of forest products. See definitions Ch. 90 §1.)
3. Commercial registrations for vehicles of 6,000 pounds or more.

All other plates and registrations are issued for *two* years.

CALENDAR YEAR BASIS

Vanity plates and registrations for commercial vehicles of 6,000 pounds or more are issued on a calendar year basis. *Black's Law Dictionary*, Fourth Edition, defines calendar year, "The period from January 1 to December 31, inclusive." Therefore, a vanity plate first effective on November 15 of some year will expire on the following December 31.

Section 5 plates are issued for one year terms on a staggered basis, as follows:



* The rules relating to trailers are identical to those relating to motor vehicles. Therefore, where this manual refers to motor vehicles, the reference, where appropriate, is also to trailers.

- maintain in full force a policy of liability insurance at least in the amount or limits set out in Ch. 90 §34A.

CALCULATION OF THE EXCISE AMOUNT

The amount of the motor vehicle excise due on any particular vehicle or trailer in any registration year is calculated by multiplying the value of the vehicle by the motor vehicle excise rate. That rate is fixed at \$25.00 per thousand dollars of value. The value of a vehicle for the purpose of the excise is the applicable percentage for that year of the manufacturer's suggested retail price for that vehicle. The applicable percentages are set out in Ch. 60A §1 as follows:

In the year preceding the year of manufacture	50%
In the year of manufacture	90%
In the second year	60%
In the third year	40%
In the fourth year	25%
In the fifth and succeeding years	10%

The manufacturer's list price for any particular vehicle is the price recommended by the manufacturer as the selling price of that vehicle when new. It is the manufacturer's list price rather than the actual purchase price which will control for purposes of calculating the motor vehicle excise. The following models illustrate calculations of amounts due for representative automobiles.

- ### Model 1

[illegible]

Model 2 assumes a motor vehicle (a) purchased two years succeeding the year of manufacture (b) with a manufacturer's list price of \$19,000.

Model 2

	Manufacturer's List Price		Ch. 60A Percentage		Value for Excise Purposes		Rate		Excise Amount
Year of Purchase:	\$19,000	x	40%	=	\$7,600	x	.025	=	\$190.00
Second Year:	\$19,000	x	25%	=	\$4,750	x	.025	=	\$118.75
Third Year:	\$19,000	x	10%	=	\$1,900	x	.025	=	\$47.50
(and all ensuing years)									

ROLE OF THE REGISTRY OF MOTOR VEHICLES IN ADMINISTRATION OF THE MOTOR VEHICLE EXCISE

ELECTRONIC VALUATION

The Registry of Motor Vehicles annually calculates the value of all registered motor vehicles for the purpose of excise assessment. For most motor vehicles, the calculations are performed electronically using valuation tapes. For automobiles and light trucks, the valuation tape is created by the National Automobile Dealers Used Car Guide Co. (NADA); for heavy trucks and school buses, the tape is created by Maclean Hunter Market Reports, Inc., publisher of the *Truck Blue Book*; and for motorcycles, the tape is created by Hap Jones, publisher of the *Motorcycle Blue Book*. In each case, it is the vehicle identification number (VIN) which drives the electronic valuation process.

NON-ELECTRONIC VALUATION: TRAILERS, FIXED EQUIPMENT

While most vehicles are valued electronically, valuation programs are not available for all motor vehicles or motor vehicle components. For example, various equipment commonly mounted on the cab chassis, such as cement mixers or pumpers, garbage compactors, home delivery oil trucks, well drillers, etc., cannot be valued electronically. Also, tapes do not exist which value the myriad varieties of trailers on the market. For these kinds of items, as well as for those motor vehicles which cannot be valued using the available tapes, the Registry of Motor Vehicles annually ascertains valua-

tions (default valuations) and mails notice of these valuations to all board of assessors in the fall of every year.

Assessors possess authority to abate a Registry default value in any case in which they believe it is excessive.

Assessors may also obtain the manufacturer's list price of any particular motor vehicle by either (a) calling an automobile dealer who regularly sells that brand of vehicle, (b) requesting the vehicle's registrant to provide the window pricing sticker of the car when new or (c) calling the manufacturer's customer service number.

PREPARATION OF BILLS OR BILLING INFORMATION

In addition to calculating the value of all motor vehicles registered in the Commonwealth, the Registry, at each municipality's option, either (a) prepares actual excise bills for the city or town or (b) enters billing information on a computer tape for the use of the city or town to produce its own bills. Any community which chooses to receive actual bills is assessed a Cherry Sheet charge of \$.15 per bill for this service.

OBTAINING AUTHORIZATION TO PRINT BILLS

Any city or town which wishes to print its own bills must submit to the Registry a Notice of Intent to Print Motor Vehicle Excise Bills. The format for making this request is set out annually in the IGR on the requirements for motor vehicle excise bills for that year. No assessment is made to those communities that receive billing information on a computer tape.

DISTRIBUTION OF BILLS OR BILLING INFORMATION

Because of the volume and variety of types of vehicles, the Registry is unable to provide bills or billing information for all vehicles at the same time. Rather, bills and billing tapes are prepared and distributed in batches subsequent to January 1. The first batch, usually mailed out in early January of each year, is comprised of passenger motor vehicles which were registered as of the preceding January 1. Vehicles registered after January 1 are contained in a later batch or batches. Another batch is comprised of trucks; still another, of motorcycles.

ROLE OF THE DIVISION OF LOCAL SERVICES IN THE ADMINISTRATION OF THE MOTOR VEHICLE EXCISE

The Division of Local Services is available to assist local officials in the administration of the motor vehicle excise by responding to questions which relate to legal or technical aspects of the excise. In addition, the Commissioner of Revenue will authorize assessors to abate excises, under G.L. Ch. 58 §8, in appropriate cases, when the assessors do not possess jurisdiction to make an abatement on their own. See Chapter 3 for a further discussion of Ch. 58 §8 abatements.

The Division, however, possesses neither the staff nor the other necessary resources to assist municipalities in valuing motor vehicles. All assessors should ensure, therefore, that they have available in their offices up-to-date copies of the *NADA Official Used Car Guide*, the *Truck Blue Book*, the *Motorcycle Blue Book* and the Registry's annual letter setting out valuations of motor vehicles and components which it is unable to value electronically. With these resources, assessors will be able to process abatement applications based upon claims of overvaluation. The Massachusetts Association of Assessing Officers (MAAO) annually organizes bulk purchasing of these valuation materials to assist cities and towns to reduce costs. There-

fore, municipalities should coordinate their purchases through the Association.

PLACE OF ASSESSMENT

The excise on any particular vehicle is to be assessed at the place where that vehicle is principally kept, i.e., garaged. The relevant statute, Ch. 60A §6, provides:

"The excise ... shall be laid and collected at the residential address of the owner, if an individual, or at the principal place of business in the commonwealth, if a partnership, voluntary association or corporation, as determined by the owner's registration, except that if a motor vehicle ... is customarily kept in some other municipality, the excise shall be laid and collected in such other municipality."

This statute was drafted with a presumption that any particular motor vehicle is kept for excise purposes at the residence or principal business address of its owner. On the basis of this presumption, the statute sets out two alternatives. It instructs that the excise for the vehicle is to be imposed and collected by the city or town where its owner (a) if an individual, lives, or (b) if a partnership, voluntary association or corporation, maintains its principal place of business *unless* the motor vehicle is customarily kept in some other city or town.

It is only when the Registry is specifically notified that a vehicle is principally kept in some other municipality that the Registry will include the excise for that vehicle in the commitment for the other municipality. Otherwise, the excise will be included in the commitment of the municipality where the individual lives or the principal place of business is located.

The place where a motor vehicle is principally kept is not identified on the registration certificate for that vehicle. However, that place is identified on the registrant's insurance coverage selection sheet. Therefore, where an issue arises concerning the place of garaging, the assessors should request a copy of this insurance document.

ASSESSMENT BY COMMISSIONER OF REVENUE

In the case of motor vehicles which are not customarily kept in any Massachusetts city or town, i.e., vehicles registered in Massachusetts but customarily kept out of state, the excise is levied and collected by the Excise Bureau within the Department of Revenue. For answers to questions respecting such excises, call the Excise Bureau at (617)887-5060.

PRORATION

VEHICLES REGISTERED AFTER JANUARY 1

Excises are prorated on a monthly basis. If a motor vehicle is registered after the beginning of any calendar year, no excise will be imposed for those months, if any, which have fully elapsed before the vehicle is registered. If a vehicle is registered for any part of a month, however, the excise will be due for all of that month. The annual excise due on a vehicle registered after January 1 will be reduced, therefore, by one-twelfth of the full year's excise for every month prior to the month in which the vehicle was registered.

The following example illustrates the calculation of the excise due on a vehicle registered after January 1.

Where, as in this example, a vehicle is registered after January 1, the Registry performs a proration, automatically, in its calculation of the excise amount due for that calendar year. Therefore, the bill or billing information prepared by the Registry for that vehicle will provide the correct amount due. Local assessors do not have to perform the calculations, themselves.

REGISTRATION CANCELED BEFORE DECEMBER 1

A registrant who cancels a registration during a calendar year *may* qualify for a partial abatement. To be eligible, however, such a registrant must also either (a) transfer title to the vehicle or (b) move out of Massachusetts and register the vehicle in some other jurisdiction. For a registrant who so qualifies, the

Example:

A vehicle is registered on March 5. If that vehicle had been registered for the entire year, the excise due would have been \$360.00. Therefore, the amount due should be reduced as follows:

Annual Amount	Months	Monthly Amount	Months not Registered	Reduction	Prorated Amount Due
\$360	÷ 12	= \$30.00	x 2	= \$60.00	\$360.00 - 60.00 \$300.00

assessors, not the Registry, must calculate the amount of the abatement for which the registrant is eligible. A registrant will never qualify for an abatement on any vehicle for any month during which the vehicle was registered for any portion of that month. For further information regarding abatements, see Chapter 3 of this manual.

MINIMUM ASSESSMENT

The minimum motor vehicle assessment which may be made is \$5.00. Therefore, if the value of a vehicle produces an excise amount less than \$5.00, an assessment of \$5.00 must be made.

PAYMENT DUE DATE

Excise bills must show the date upon which the bills were issued and must contain the statement: "Due and Payable in Full Within 30 Days of Issue." (See annual IGR on the format of motor vehicle excise bills.) A payment, to be timely, must be received in the collector's office on or before the close of business on the 30th day following the date shown on the bill as the date of issue. As is the case with property taxes, mailing the payment on or before the due date does not satisfy the requisite for timely payment if it is not received until after the due date.

EXCISE BILL MAILED AFTER THE DATE OF ISSUE

If an excise bill is mailed after the printed date of issuance, the bill is due and payable at the expiration of 30 days from the date the bill was mailed by the tax collector. Again, to be timely paid, the payment must

be received in the collector's office on or before the close of business on the 30th day following the date of mailing.

DATE OF MAILING

The date of mailing of a motor vehicle excise bill is not necessarily the postmarked date. Rather, it is the date certified by the collector, on the affidavit of sending, executed in accordance with G.L. Ch. 60 §3, as the date the bill was mailed. The collector should certify the mailing date on the affidavit to be the date the bill was delivered into the custody of the post office. It is irrelevant whether a bill is postmarked on the date it is turned over to the post office. For the purpose of determining whether a bill is timely paid, that bill is deemed to have been mailed on the turnover date.

INTEREST

If a motor vehicle excise bill is not timely paid, interest accrues on any unpaid amount at the rate of 12 percent per year, simple interest, not compounded, from the date the payment was due until the date it is paid.

PERSON TO WHOM EXCISE BILL SHOULD BE ASSESSED

Ch. 60A §2 directs that the motor vehicle excise "shall be assessed to the owner of the vehicle or trailer registering the same." This statute deems a person who registers a motor vehicle to be that vehicle's owner for excise purposes. Moreover, pursuant to Ch. 90 §2, the statute which sets out rules and procedures relating to the registration of motor vehicles, motor vehicles may only be registered to their owners.

This requirement is corroborated by Ch. 90D §4 which establishes that, except for certain vehicles expressly exempted under Ch. 90D §2, the Registrar shall accept no new application for registration pertaining to a motor vehicle or trailer under the provisions of Ch. 90 until the owner thereof makes application to the registrar for a certificate of title.

The Supreme Judicial Court dealt with the issue of vehicle ownership in *Casey v. Gallagher*, 326 Mass. 746, 750 (1950) where it found registration of a motor vehicle to connote ownership. The Court declared, "[R]egistration in the name of a person as owner is evidence of ownership by him."

The word "owner," as used in Ch. 90 §2, is not confined to a person having absolute interest in the vehicle; a motor vehicle may be registered by a person having a part ownership in the vehicle. It may, also, be registered by a corporation, association, partnership or other legal entity.

By the express provisions of Ch. 90 §2A, motor vehicles may be registered to minors.

In the case of a leased vehicle, the bill must be assessed to the lessor (leasing company) since the lessor, not the lessee, is the owner of the vehicle.

In sum, assessors should assess the excise for any particular motor vehicle to the owner of that vehicle who, of necessity, will be the registrant.

ASSESSMENT IN THE CASE OF THE DEATH OF THE REGISTRANT

REGISTRANT DIES AFTER ASSESSMENT BUT PRIOR TO PAYMENT

If an excise is assessed to a registrant who dies prior to payment, the collector should seek payment from the decedent's executor or administrator. Pursuant to Ch. 197 §9, the collector must make the claim within one year after the date of the decedent's death. If the executor or administrator does not pay, the collector should commence an action to collect in the appropriate probate court.

REGISTRANT DIES BEFORE ASSESSMENT

If an excise is assessed after a registrant dies, the assessment should be made to the decedent's executor or administrator. If an executor or administrator has not yet been appointed, the assessment should be made

to the decedent's estate. Upon subsequent appointment, the executor or administrator becomes responsible to pay the assessment as though it had been to him/her.

LIABILITY OF EXECUTOR OR ADMINISTRATOR

Pursuant to Ch. 60 §36, a decedent's executor or administrator, who receives or has possession of money applicable to a motor vehicle excise assessed upon the deceased person's estate, must pay the excise forthwith. If the executor or administrator fails to do so, he/she will, if a demand has been made, become personally liable for that excise. To collect upon such a liability, the collector must commence an action within six years.

ADDRESS TO WHICH BILL SHOULD BE MAILED

For individuals, the excise for each particular motor vehicle should be mailed to the owner's residential address as that address appears on the individual's registration, unless that owner has expressly specified in writing a different mailing address.

For corporations, partnerships or voluntary associations, the excise should be mailed to the owner's principal place of business in the Commonwealth, if any, as that address appears on the owner's registration. If the owner has no principal place of business in the Commonwealth, the bill should be mailed to the owner's principal place of business outside the Commonwealth.

FAILURE TO RECEIVE BILL

So long as a municipality mails an excise bill to a registrant and the bill is *sent to the registrant's address*, as that address appears on the vehicle's registration or as the person has otherwise specified in writing, the registrant is presumed to have received the bill, regardless whether he/she received it in fact. If the registrant fails to receive such a bill, he/she is, nevertheless, liable for its timely payment, and interest and fees will accrue if the bill is not paid on or before the due date.

BILL MAILED TO WRONG

ADDRESS

If a motor vehicle excise bill is *not sent to the registrant's address*, as that address appears on the vehicle's registration or as expressly designated by the registrant, collection cannot be enforced. In the case of a bill sent to the right city or town but to the wrong street address, the bill should be reissued by the collector to the correct street address without the addition of any interest or fees. In the case of a bill sent to the wrong city or town, that bill should be abated in the incorrect municipality and recommitted in the correct city or town. (See discussion of assessors discretion to recommit excise assessment, following.) If the assessors lack jurisdiction to so abate, they may seek jurisdiction under Ch. 58 §8. (See Chapter 2; see also IGR 94-202.)

REGISTRANT MOVES TO

NEW ADDRESS

If a registrant moves to some other address than that shown on his/her excise bill, that registrant should take steps to ensure that his/her address is changed on his/her license and registration. G.L. Ch. 90 §26A states:

"Every person in whose name a motor vehicle ... has been registered ... shall report any change of his name, residential address or mailing address in writing to the registrar within thirty days after the date on which such change was made."

METHODS TO EFFECTUATE

A CHANGE OF ADDRESS

FORM #10094

A convenient way for a person to make a change of address in the Registry's data bank is to fill out and submit an orange "Change of Address — License/Registration" card, Form #10094. A registrant may also change the address on his/her registration by calling the Registry of Motor Vehicles at (617) 351-4500, although this procedure does not technically comply with the statute's re-

quirement that the change be made in writing. Assessors, too, can alter or update information in the Registry's excise data bank by calling (617) 351-9380; however, the Registry would prefer the assessors to effect these changes in writing, using the standard form entitled Request for Records Change.

CHANGE OF ADDRESS LABELS; FEES

Upon a request made either in writing or by phone, the Registry will provide change of address labels upon which licensee/registrants may enter address changes. These labels may then be affixed, as appropriate, to previously issued licenses and registrations. The Registry provides change of address labels at no charge. Alternatively, a registrant/licensee who changes his/her address may obtain from the Registry an amended license and/or registration(s) displaying the new address. For each amended document, the Registry will assess a \$15.00 fee pursuant to the authority of Ch. 90 §33.

LIABILITY IF NOTICE OF CHANGE OF ADDRESS IS NOT GIVEN TO THE REGISTRY

If a registrant moves and does not change his/her address, the excise bill will be mailed to the registrant's former address, and the bill might not be forwarded by the post office to the new address. So long as a municipality mails the excise bill to the address that appears on a person's registration, the municipality fulfills its duty to give notice to the registrant. The registrant becomes subject to interest and fees if the excise is not timely paid. If a bill does not reach a registrant because that person moved and did not notify the Registry of his/her change of address, the registrant is not entitled to any relief.

AVAILABLE RELIEF IF CHANGE OF ADDRESS IS GIVEN BUT NOT EFFECTUATED DUE TO REGISTRY ERROR

On the other hand, if a person moves and properly notifies the Registry of the move but, notwithstanding, does not receive an excise bill, that person may be entitled to relief. Two particular circumstances should afford such relief:

1. A registrant properly files a change of address; however, due to a clerical error, the change is either not entered, at all, or is incorrectly entered into the Registry's records.
2. A registrant's license and registration are not integrated in the Registry's records. The registrant properly files an address change which effects a change in his/her license file. However, the address in his/her registration file is not concurrently updated, and the excise bill goes to the incorrect address. (This is an infrequent circumstance since the vast majority of the Registry's records are integrated.)

In both of the above circumstances, the assessors are not legally obligated to grant an abatement, if they possess jurisdiction, or to seek authority to grant an abatement under Ch. 58 §8, if they lack such jurisdiction.

They possess full discretion in these matters.

However, the Department of Revenue believes an abatement is fair and equitable in such situations.

PAYMENT DUE TO MUNICIPALITY WHERE VEHICLE WAS ORIGINALLY REGISTERED

The excise for any particular year is due to the municipality in which a vehicle was registered on January 1 of that year. For a vehicle not registered on January 1, the excise is due to the municipality in which the vehicle was registered after January 1. Therefore, in the case of any person who moves during any particular registration year, the excise will be due to the city or town where the vehicle was originally registered for that calendar year.

BILL MAILED TO WRONG PERSON

Ch. 60A §2 expressly requires motor vehicle bills to be mailed to the vehicles' owners.

Therefore, collection cannot be enforced in the case of a bill sent to the wrong person. Such a bill should be abated. If a municipality sends a bill to the wrong person, it should, when it discovers the error, reissue

the bill to the proper person. That bill would be due 30 days from the date of mailing.

RECOMMITMENT OF MOTOR VEHICLE EXCISE BILLS

A motor vehicle excise bill committed to the incorrect city or town is not enforceable and must, upon a written request timely submitted by the registrant, be abated by the assessors of that city or town. Assessors granting such an abatement should, forthwith, notify the assessors in the municipality where the commitment should have been made. Upon receipt of such notification, these assessors must recommit that bill to their tax collector for mailing to the registrant, regardless when the earlier commitment was made.

ASSESSORS DISCRETION TO RECOMMIT EXCISE ASSESSMENT

Assessors must commit any and all excise assessments which are due to their respective municipalities. They lack the discretion to do otherwise. Ch. 60A §2 states that, except for vehicles which are expressly exempt, "[T]he board of assessors shall assess the excise imposed by [Ch. 60A] section one, and commit the same to the collector of taxes with their warrant for the collection thereof." (Emphasis supplied.) Assessors

have no authority to refuse to commit an excise for some earlier calendar year because the commitment for that year has been extinguished or for any other reason.

ASSESSMENT OF MACHINERY ATTACHED TO A MOTOR VEHICLE

Machinery which is permanently attached to a motor vehicle or trailer and which cannot feasibly be removed and sold separately for its intended purpose should be assessed as part of the value of the motor vehicle or trailer under the motor vehicle excise. When so assessed, it is exempt from personal property tax in the same manner as the rest of the motor vehicle or trailer under Ch. 59 §5(35).

COMMON CARRIERS

Common carriers are subject to the motor vehicle excise. A common carrier is one who, as a regular business, transports persons and/or goods from place to place for those who employ him/her and who pay his/her charges. Therefore, unless a carrier is exempt from the excise as a transportation authority or otherwise, city and town assessors and collectors should assess and levy, in the usual way, an excise on all vehicles owned by that common carrier which are customarily kept in their municipalities.

Exemptions

2

Ch. 60A §1 exempts the following vehicles from the motor vehicle excise:

I. Vehicles owned and registered by the Commonwealth or any political subdivision of the Commonwealth. Political subdivisions include cities, towns, counties, districts and authorities.

II. Vehicles owned and registered by any corporation whose personal property is exempt from taxation under Ch. 59 §5, Clauses Third and Tenth. Clause Third exempts the personal property owned by literary, benevolent, charitable and scientific corporations. Clause Tenth exempts the personal property owned by religious organizations.

In making a determination about the excise status of vehicles owned by a charitable corporation, the assessors must ascertain whether a charity satisfies the Clause Third requisites. Clause Third exempts the:

“[p]ersonal property of a charitable organization, which term, as used in this clause, shall mean (1) a literary, benevolent, charitable or scientific institution or temperance society, incorporated in the commonwealth, and (2) a trust for literary, benevolent, charitable, scientific or temperance purposes if it is established by a declaration of trust executed in the commonwealth or all its trustees are appointed by a court or courts in the commonwealth and if its principal literary, benevolent, charitable, scientific or temperance purposes are principally and usually carried out within the commonwealth.” (Emphasis added.)

The documents a charity should provide, therefore, are, for a corporation, a copy of the articles of incorporation, and for a trust, a copy of its declaration of trust. These documents, alone, should be sufficient to deter-

mine whether a charity qualifies for exemption on automobiles it owns and registers. (To determine a charity's tax status regarding real property, additional documents would be necessary to establish how the property was occupied and used on the qualification date.)

III. Vehicles *leased* for a full calendar year to any charitable corporation except a charitable educational corporation which either grants degrees or awards diplomas. (Vehicles *owned* by such educational corporations which satisfy the exemption requisites for a charitable corporation, cited above, are exempt from the excise.)

A. Only a vehicle leased for a full calendar year may qualify for an exemption. Therefore, a vehicle leased from February 1 of one year through January 31 of the next year would not qualify for an exemption. A vehicle leased from February 1 of one year through January 31 of the second following year could only qualify for the full calendar year contained within the 24 months of the lease.

B. The Legislature's purpose in restricting the excise exemption on vehicles leased to charities to full calendar years is the fact that the excise, itself, is assessed on a calendar year basis. Without this restriction, a leasing company could obtain a calendar year exemption on the basis of a lease which terminated at some time during a calendar year.

C. Vehicles leased to private schools which are organized as charities are not exempt from the motor vehicle excise.

D. To determine the eligibility of lessors under this provision, assessors should require:



1. A copy of the lease agreement or some other documentation which discloses the dates the lease commences and terminates.

2. The name, address and sales tax exemption number of the non-profit lessee.

IV. Vehicles owned and registered by former prisoners of war or the surviving spouses of former prisoners of war.

- A. This exemption is available only at local option. It must be accepted by a vote of the city council with the approval of the mayor, in a city, and by vote of the town meeting or town council, in a town.

- B. To qualify as a former prisoner of war, a person must have been regularly appointed, enrolled, enlisted or inducted into the military forces of the United States and been captured, separated and incarcerated by an enemy of the United States during an armed conflict.

- C. At the time of the initial filing of an application for this exemption, the applicant must supply sufficient evidence of the former prisoner of war's earlier incarceration, either through documentation by the Veterans Administration or by providing a copy of the veteran's discharge papers. In future years, only the application for exemption must be filed.

- D. A surviving spouse of a deceased former prisoner of war is entitled to this exemption until such time as that surviving spouse remarries.

- E. Prisoner of war registration plates are not necessary for entitlement to this exemption.

V. Vehicles owned and registered by handicapped persons.

- A. Handicapped veterans:

1. To qualify as a veteran, a person must have been honorably discharged from the armed services and have served in either World War I, World

War II, the Korean Emergency, the Vietnamese War, the Lebanese Peace Keeping Force, the Panamanian Intervention Force or the Persian Gulf.

2. In addition, the person must, by reason of such service, have suffered either (a) an actual loss of or a permanent and complete loss of use of, one or both feet or one or both hands or (b) a permanent vision impairment, of the magnitude set out in Ch. 60A §1, of one or both eyes. As used in this statute, loss of use is the constructive equivalent of an actual loss. No magnitude of loss which is less than total loss of use qualifies an individual for exemption.

3. This loss must be documented by the records of the Veterans Administration.

4. This exemption is restricted for each handicapped veteran to one vehicle at a time, owned and registered by the veteran for personal, non-business use. It does not preclude a qualifying person's receiving an abatement on a second vehicle in a calendar year so long as he/she: a) conveys title to the first vehicle upon which he/she already received an excise abatement, and b) transfers the registration from the first vehicle to the second or cancels the registration on the first vehicle and obtains a new registration on the second.

5. A veteran who owns more than one vehicle has the right to choose the vehicle upon which to obtain an exemption.

6. A handicapped veteran who owns a vehicle jointly with his/her spouse or with some other person(s) satisfies the ownership requisite for a full exemption. See the Appellate Tax Board decision in *Brunette v. Assessors of Southampton*, Docket No. F231437, issued October 11, 1966.

B. Handicapped non-veterans:

1. This exemption is available to a person who has suffered either (a) an actual loss of or a permanent and *complete loss of use of* both legs or both arms or (b) a permanent vision impairment of both eyes of the magnitude set out in Ch. 60A §1. As with the exemption for handicapped veterans, loss of use is the constructive equivalent of an actual loss.

2. A board of assessors may require an applicant for this exemption to provide a certification by a physician of the existence of the requisite loss.

3. This exemption is restricted for each handicapped person to one vehicle at a time, owned and registered by the person for personal, non-business use. It does not preclude a qualifying person's receiving an abatement on a second vehicle in a calendar year so long as he/she: a) conveys title to the first vehicle upon which he/she already received an excise abatement, and b) transfers the registration from the first vehicle to the second or cancels the registration on the first vehicle and obtains a new registration on the second.

4. A person who owns more than one vehicle has the right to choose the vehicle upon which to obtain an exemption.

5. A handicapped person who owns a vehicle jointly with his/her spouse or with some other person(s) satisfies the ownership requisite for a full exemption. See the Appellate Tax Board decision in *Brunette v. Assessors of Southampton*, Docket No. F231437, issued October 11, 1966.

C. Handicap Plates:

A person need not have a handicap plate to be eligible for this exemption. Alternatively, one who has a handicap plate is

not per se entitled to an exemption. The requisite loss must still be demonstrated.

VI. Vehicles operated with Section 5 plates and owned or controlled by manufacturers, farmers or dealers. (See discussion of farm vehicles, following.)

Formerly, vehicles operated with repair plates also qualified for an exemption from the excise. However, this exemption was repealed, commencing with calendar year 1991. Frequently, tow trucks are operated with repair plates. Such trucks are not exempt from the motor vehicle excise.

The exemption for vehicles operated with these special plates is conditional, however. It should only be granted if:

A. The vehicles are operated exclusively for business purposes. The statute forbids the use of such vehicles for the personal use or convenience of the holder of the special plates or some other person. Such activities as commuting or running errands, which are clearly for the "convenience" of some person, is a non-exempt use. The statute makes no allowance for even minimal personal use. Any degree of personal use, however slight, disqualifies a motor vehicle from an excise exemption.

B. The manufacturer, farmer or dealer timely filed an application with the assessors using State Tax Form 126A requesting the exemption. The application must contain a statement "subscribed under penalties of perjury" by the owner or controller of the vehicle that it will not be operated for any personal use.

PENALTY FOR UTILIZING VEHICLE WITH SECTION 5 PLATE FOR PERSONAL USE

If assessors discover that a vehicle operated with special plates and upon which an exemption was allowed is, notwithstanding, utilized for personal use, the assessors must, forthwith, assess the excise upon that vehi-

cle. In addition, they shall assess a penalty of \$100.00. An excise assessed in such circumstances cannot be subsequently abated for any part of the year of assessment, regardless whether title to the vehicle assessed is transferred.

ASSESSMENT SHOULD NOT BE MADE ON REGISTRATION PLATES

Making assessments on vehicles operated with special plates is problematic for assessors because such plates may be moved from vehicle to vehicle. Since officials possess no efficient means to know what vehicles these are, frequent assessment practice has been to assess the plates, themselves, rather than the vehicles to which they are attached. This practice, however, is inconsistent with the holding of the Supreme Judicial Court in *Board of Assessors of Needham v. E. J. Bleiler Equipment Co., Inc.*, 364 Mass. 834 (1974), a case which dealt with dealer plates. The Court stated, "An assessment of a motor vehicle excise on dealer's plates, as opposed to vehicles, is not authorized by G.L. Ch. 60A §1."

VII. Vehicles jointly registered in Massachusetts and some other state, and customarily kept in the other state, provided:

A. the individual or business that owns the vehicle resides in another state, and has no principal place of business in the Commonwealth, and

B. the other state does not impose a higher (1) excise, (2) privilege or property tax, (3) registration fee or (4) fee in lieu of or in addition to a registration fee on Massachusetts vehicles:

1. customarily kept in Massachusetts and
2. registered:
 - a) by a resident of Massachusetts
 - b) both in Massachusetts and in that other state.

Upon a request by a board of assessors, the Commissioner of Revenue will determine the exemption eligibility of any particular registrant. For a Supreme Judicial Court case applying the eligibility requisites for this exemption, see *Akers Motor Lines, Inc. v. State Tax Commissioner*, 344 Mass. 359 (1962).

VIII. Vehicles owned and registered by servicemen and women (soldiers and sailors).

A. This exemption is available to non-domiciliary soldiers and sailors who:

1. register their motor vehicles in Massachusetts,
2. are stationed in Massachusetts or some other state pursuant to military orders and
3. are in compliance with the registration laws of the state(s) in which they reside while on military assignment.

B. The soldier or sailor need not be stationed in Massachusetts. For example, he/she may be stationed in a border state. So long as he/she is absent from his/her domicile by reason of compliance with military orders, he/she is exempt from the motor vehicle excise in every state except that of his/her domicile so long as he/she is in compliance with the registration laws of the state of his/her residence. (*Soldiers' and Sailors' Civil Relief Act*, 50 USCA §574 App.)

C. To determine the eligibility of a soldier or sailor who seeks an exemption as a non-domiciliary, the assessors should require a letter from the soldier or sailor's commanding officer establishing that he/she is absent from his/her domicile by reason of compliance with military orders, identifying the place of the soldier or sailor's assignment.

D. A Massachusetts domiciliary who is sent to some other state pursuant to military orders but does not cancel his/her Massachusetts registration is not eligible for a motor vehicle exemption.

E. A non-domiciliary soldier or sailor may qualify for an exemption on two or more vehicles. However, for each exemption sought, the soldier or sailor must be able to prove that he/she owns the subject vehicle and utilizes it for personal, non-business use.

F. A non-domiciliary soldier or sailor who owns a vehicle jointly with his/her spouse or with some other person(s) satisfies the ownership requisite for a full exemption. See the Appellate Tax Board decision in *Brunette v. Assessors of Southampton*, Docket No. F231437, issued October 11, 1966.

IX. Vehicles owned and registered by foreign dignitaries, diplomats, consular officers or employees.

A. No Massachusetts statute grants a motor vehicle exemption for diplomats, etc. However, numerous tax exemptions are granted by treaties and conventions which have the authority of federal law and pre-empt any state law to the contrary. For example, Article 49 of the Vienna Convention exempts diplomats of signatory nations and members of their families from all "dues and taxes, personal or real, national, regional or municipal," with exceptions not relevant to motor vehicle excise.

B. In order to verify the status as a diplomat of a person claiming an exemption, assessors can contact:

Registration and Titling Unit
Diplomatic Motor Vehicle Office
U.S. Department of State Office
of Foreign Missions
Washington, D.C. 20520

exempts from taxation motor vehicles which are either subject to or exempt from the excise under Ch. 60A.

Conversely, any vehicle which is not subject to or exempt from the motor vehicle excise is subject to taxation as personal property under the provisions of Ch. 59 §18. The owner of any such vehicle should report that property to the assessors on a form of list, using either State Tax Form 2 or 2HF, as appropriate.

VALUATION OF VEHICLES SUBJECT TO PERSONAL PROPERTY TAX

While Ch. 60A directs that vehicles be valued for excise in conformance with the formula set out in §1, Ch. 59 §38 prescribes that assessors value personal property at "fair cash value." In order to determine the fair cash value of unregistered motor vehicles, assessors should use valuation manuals, such as NADA's *Official Used Car Guide*. Such manuals provide average *retail* prices, as well as manufacturer's suggested list prices used for excise purposes. In addition, while the purchase price of a motor vehicle is irrelevant for purposes of excise valuation, that price is pertinent for personal property valuation. So long as a sale is arms length, some weight should be given to the sales price in determining the value of the subject vehicle for purposes of personal property tax assessment.

FARM PLATE EXEMPTION ISSUES

LIMITATION OF USE OF PLATES

A farm plate may not be used on a passenger vehicle. A pickup truck is not a passenger vehicle for purposes of this provision. Therefore, farm plates may properly be used on pickup trucks.

USE OF PLATES ON FARM TRACTORS

While farm plates may be used on farm tractors, such use does not qualify those tractors for an exemption from the motor vehicle excise. The exemption is available only for "motor vehicles and trailers" operated with

LIABILITY OF MOTOR VEHICLES FOR A PERSONAL PROPERTY TAX

The motor vehicle excise is an assessment in lieu of a personal property tax. Vehicles which are exempt from the motor vehicle excise are not subject to a personal property tax, pursuant to Ch. 59 §5(35), which ex-

farm plates. Pursuant to Ch. 90 §1, vehicles which are (a) used for other purposes than transportation of property, (b) incapable of being driven at a speed exceeding twelve miles per hour and (c) designed especially for use elsewhere than on the traveled part of ways are expressly exempted from the definition of motor vehicles. Since a farm tractor does not satisfy the definition of a motor vehicle, it is not subject to the motor vehicle excise in the first place. Rather, such equipment should be assessed as personal property.

Where the owner of a tractor is "principally engaged in agriculture," that tractor may be eligible for assessment as farm machinery under Ch. 59 §8A. This statute extends a tax advantage to qualifying farmers. Under its provisions, the farm animals, machinery and equipment of a person principally engaged in agriculture is assessed "at the rate of five dollars per one thousand dollars of valuation."

Alternatively, an owner of a tractor not qualifying for assessment under this statute is subject to taxation under the personal property provisions of Ch. 59 §18.

USE OF PLATES ON FARM TRAILERS

Farm trailers, also, do not qualify for exemption from the motor vehicle excise. The definition of "trailer" in Ch. 90 §1 expressly excludes "farm machinery or implements when used in connection with the operation of a farm or estate ... [and] any vehicle when towed behind a farm tractor and used in connection with the operation of a farm or estate." Therefore, farm trailers, like farm tractors, above, should be assessed either as personal property or as farm machinery.

OPERATION OF UNREGISTERED VEHICLES USED EXCLUSIVELY FOR AGRICULTURAL PURPOSES

Ch. 90 §9 authorizes the operation of an unregistered tractor, trailer or truck for a distance not exceeding one-half mile, if uninsured, or two miles, if insured, so long as it is used exclusively for agricultural purposes. Evidence of such insurance must be filed with the Registrar of Motor Vehicles.

Abatements

3

The rules and laws relating to abatements of the motor vehicle excise are set out in Ch. 60A §1.

The authority to abate an excise lies in the board of assessors. No other person may grant an abatement.

While assessors possess authority to abate motor vehicle excises, they may only do so only within the limitations and consistent with the specific circumstances which are set out in the statute. These limitations and circumstances are discussed below.

APPLICATION FOR ABATEMENT

Assessors possess jurisdiction to abate a motor vehicle excise only if an application for abatement is timely filed. To be timely filed, an application must be received by the assessors on or before December 31 of the year following the year to which the excise relates. If an excise bill is sent after December 1 of the year following the year to which an excise relates, then an application for abatement, to be timely filed, must be received by the assessors on or before the 30th day following the mailing of the bill.

Examples

For an excise bill for calendar 1995 mailed at any time during 1995, the deadline for submitting an application for abatement would be December 31, 1996.

For an excise bill for calendar 1995 mailed on March 4, 1997, the deadline for submitting the application would be April 3, 1997. (March has 31 days.)

PRORATION

As was explained in Chapter 1, motor vehicle excises are prorated on a monthly basis. For each month that the assessors allow an abatement on a motor vehicle, the excise due on that vehicle is reduced by an amount equal to one-twelfth of the annual amount

which would otherwise have been due, multiplied by the number of months during which the vehicle was not registered. Except in the case of an overvaluation, a condition precedent to the granting of an abatement is the cancellation of the registration on a motor vehicle. Where a requisite for an abatement is such cancellation, an abatement cannot be given for any month during which the vehicle was registered for any period of time.

CANCELLATION OF REGISTRATION

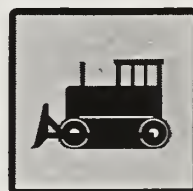
Canceling the insurance policy on a motor vehicle does not effect a contemporaneous cancellation of the registration on that vehicle. Rather, to cause a cancellation, a registrant should deal directly with the Registry of Motor Vehicles, either in person, by phone or by mail.

To effectuate a cancellation on a particular vehicle, a registrant should return the license plates to the Registry and receive a Plate Return Receipt. A registrant who does not have possession of those plates should obtain from the Registry a Form C19, "Lost Plate Affidavit for Cancellation of Registration." Obtaining either a Plate Return Receipt or a processed Form C19 will effectuate a cancellation of the registration on that vehicle.

An insurer, in order to cancel or revoke an insurance policy on a motor vehicle, must give electronic notice to the Registry. If the Registry does not receive a new certificate of insurance covering the same vehicle within the following 23 days, it will mail notice to the registrant that unless a new certificate is provided within the ensuing 10 days, the registration on that motor vehicle will be revoked.

MINIMUM ABATEMENT

The minimum motor vehicle abatement which may be made is \$5.00. If a registrant otherwise qualifies for an abatement but the



amount of that abatement is less than \$5.00, no abatement may be made.

CH. 58 §8

If an application for abatement is not timely filed, the assessors, subsequently, have no jurisdiction to abate. If they wish, nevertheless, to grant an abatement, their only legal recourse is to seek authority from the Commissioner of Revenue to grant the abatement. The Commissioner possesses authority to authorize abatements under this statute in circumstances where extraordinary or clearly mitigating circumstances are demonstrated which justify a taxpayer's failure to have utilized the standard abatement process and the assessors do not, themselves, otherwise have authority to abate. For details regarding the submission for abatement authority under this statute, assessors should consult IGR 92-206.

CIRCUMSTANCES WHICH ALLOW ASSESSORS TO EXERCISE ABATEMENT AUTHORITY

Where assessors possess jurisdiction to make abatements, they may exercise that authority in the following circumstances:

A VEHICLE IS OVERVALUED

As is explained in Chapter 1 of this manual, Ch. 60A §1 of the General Laws sets out the procedure whereby motor vehicles are to be valued for the purpose of the excise. This procedure is based upon the manufacturer's list price for that vehicle, discounted by the designated percentage which accords with the age of the vehicle. However, the statute permits the assessors to abate that value if, in their opinion, the value so determined is excessive.

Assessors should rarely exercise this abatement authority and, then, only in the case of some extraordinary circumstance unique to a particular vehicle. If, for example, a vehicle were substantially damaged due to an accident or other cause and were not repaired, the assessors could lawfully abate its value.

In the absence of some extraordinary circumstance, however, a value properly calculated should not be altered because valuing all motor vehicles using a uniform procedure ensures equity and regularity in the assessment process.

A REGISTRANT TRANSFERS TITLE TO A VEHICLE AND CANCELS THE REGISTRATION ON THAT VEHICLE

Ch. 60A §1 makes an abatement available if "during a calendar year ownership of a motor vehicle ... is transferred by sale or otherwise and its registration is surrendered.

Two actions are necessary for qualification for this abatement eligibility. A vehicle owner must both (a) convey title to the vehicle and (b) cancel the registration on that vehicle. The performance of one of these actions, alone, does not qualify a person for an abatement. *Therefore, a person who cancels the registration on a vehicle during a calendar year but does not convey title to the vehicle is not entitled to an excise abatement for any part of that year.* For the succeeding fiscal year, the vehicle should be assessed as personal property. See Chapter 2, "Liability of motor vehicles for a personal property tax."

A transfer of title may be made by gift, sale, repossession or any other action which conveys ownership from the registrant to some other person. In processing an application for abatement under this provision, assessors should require that they be presented with a copy of a bill of sale or some other document which establishes that a transfer has occurred. If a registrant claims abandonment of a vehicle at a junkyard or some other place of disposition, that registrant must present evidence thereof, such as a receipt from the owner of the junkyard. If an insured vehicle is totaled in an accident and settlement is made for the full value of the vehicle, title passes to the insurance company by right of subrogation (legal doctrine of substituting one creditor for another). In such a case, the month the insurance company makes payment to the insured is the month that title transferred.

Generally, the assessors should require a plate return receipt to show evidence of cancellation of registration. However, in some circumstances, such as when a vehicle is totaled in an accident and the vehicle is removed to a junkyard, it may not be possible for the owner to retrieve the plates. In such circumstances, the registrant should cancel the registration on that vehicle using Registry of Motor Vehicle Form C19 (See copy in Appendix.). Filing this form with the Registry will eliminate future billings on the vehicle. Otherwise, excise bills will issue until the registration expires.

Whenever the performance of more than one activity is required to establish eligibility for an abatement, the proper date for use in calculating the amount of the abatement is that date when the final one of the activities is performed.

A REGISTRANT MOVES OUT OF STATE AND REGISTERS IN SOME OTHER STATE OR COUNTRY

A registrant is eligible for an excise abatement who "during a calendar year ... removes to another state and registers such motor vehicle or trailer in such other state and surrenders or does not renew his/her registration in this state." (G.L. Ch. 60A §1. Emphasis supplied.)

As above, two actions are also necessary for abatement eligibility under this provision. A person must have (1) registered his/her vehicle in some other state and (2) surrendered his/her Massachusetts registration.

Although, assessors should generally require a person to present to them a plate return receipt as evidence of cancellation of his/her Massachusetts registration, this requirement should be abandoned in the case of a state (e.g., Arizona and California) which, when issuing a registration, confiscates the plates of any other state in which the vehicle may be registered at the time. In such a case, proof of registration in that state is sufficient evidence of the registrant's cancellation of his/her Massachusetts registration. The date of registration in the other

state could appropriately be deemed the date of surrender of the Massachusetts registration for purposes of the relevant abatement provision under Ch. 60A §1. Of course, if a person does not cancel his/her registration in Massachusetts using a Form C19, excise bills will continue to issue until the registration expires.

A PERSON CANCELS THE REGISTRATION ON A VEHICLE AND SUBSEQUENTLY RE-REGISTERS THAT VEHICLE IN THE SAME YEAR

No excise shall be due if assessed on the same vehicle more than once in any calendar year by reason of the re-registration of that vehicle, except as outlined above in the case of a transfer of that vehicle or a move out of the state by its owner. If a person cancels the registration on a motor vehicle in any particular year but does not transfer title to that vehicle or does not move to some other state and register the vehicle in the other state and the person subsequently re-registers the vehicle in the same year, the excise imposed for the months of the second registration should be abated. Otherwise, the person would be liable for two excises on the same vehicle for the same year.

A PERSON SELLS OR TRADES A MOTOR VEHICLE, CANCELS THE REGISTRATION ON THAT VEHICLE AND SUBSEQUENTLY TRANSFERS THE REGISTRATION TO SOME OTHER VEHICLE IN SAME MONTH

If a person sells or trades a vehicle, cancels the registration on that vehicle and transfers that registration to another motor vehicle in the month of cancellation, the excise may be fully abated on the transferred vehicle for that month. Otherwise, the person would be liable for two excises on the same registration for the same month.

If such a transfer occurs during January, the registrant is eligible for a full abatement on the transferred vehicle. The registrant is *not* liable for a minimum \$5.00 assessment on this transferred vehicle. Rather, the minimum excise liability shifts to the second vehicle.

A VEHICLE IS STOLEN

A. A registrant is eligible for an abatement of the excise on a vehicle which is stolen, provided that the registrant:

1. notifies the police within 48 hours of discovery of the theft,
2. surrenders the certificate of registration (not sooner than 30 days after the theft), and
3. presents a certificate of cancellation of registration from the Registrar of Motor Vehicles verifying that the vehicle has been stolen. If the plates are lost with the stolen vehicle, the registrar will issue a Form C19, "Lost Plate Affidavit for Cancellation of Registration." The abatement will be issued for the months following the month of cancellation of the certificate of registration.

B. Vehicle Subsequently Recovered

If a motor vehicle which had been stolen and for which an abatement of the excise has been granted is subsequently recovered and registered in the same calendar year by the same owner, that owner is liable to pay a proportionate part of the excise for those months of the remaining year.

C. False Report of the Theft of a Motor Vehicle

If a registrant makes a false report of the theft of a motor vehicle and seeks or obtains, thereby, an abatement of the excise on that vehicle, the registrant is subject to a penalty of up to three times the excise due on the vehicle for the entire year. To recover this penalty, the city or town to which the excise was payable must bring a civil action against the registrant.

PROCESSING AN ABATEMENT

Upon granting an excise abatement, assessors must prepare an abatement certificate (State Tax Form 146) and provide a copy to the tax collector and a copy to the registrant. Upon receipt of a certificate, a registrant may go to the tax collector to request a refund, if the excise has been paid, or to have the bill adjusted, if it has not.

The board must maintain copies of all abatements granted as permanent records. A majority of the board must sign the abatement certificates. In addition, the assessors must regularly prepare a monthly report of all excise abatements granted, using State Tax Form 156, and forward the report for each particular month to the collector as soon as reasonably possible following the end of that month.

ABATEMENT OF INTEREST

The Supreme Judicial Court, in *Bordeau v. Registry of Motor Vehicles*, 373 Mass. 429 (1977), held that the abatement procedure is available to contest costs and fees, as well as the amount of the excise assessed. The Court stated:

"Our construction of the scope of the remedy available in the abatement procedure requires an interpretation of the term "excise" broad enough to allow an aggrieved taxpayer the right to correct a possible injury due to a wrongful assessment of any charge associated with the excise tax." Moreover, Ch. 60 §20 provides that when it is found, in any particular case, that no tax is due, costs or fees should not be collected.

Therefore, when a tax collector receives from the assessors a certificate which abates all of an excise assessment, the collector should abate all the collection fees, enumerated in Ch. 60 §15, as well as all other interest and charges. These fees include fees for the services of a deputy collector.

APPEAL OF ASSESSORS'

DECISION

Pursuant to Ch. 58A §6, the Appellate Tax Board has express jurisdiction to decide appeals of assessors' decisions regarding motor vehicle excise assessments. Ch. 60A §2 expressly authorizes aggrieved parties to take an appeal from any decision by the assessors relating to the motor vehicle excise to the Appellate Tax Board.

REFUND OF INTEREST

If the Appellate Tax Board (or the County Commissioners) orders an abatement, Ch. 60A §2 mandates that the municipality pay

interest on the refund of any overpayment, at an annual rate of six percent, calculated from the date of payment. No interest shall be paid on account of an overpayment upon an abatement granted by the board of assessors.

NOTIFICATION OF VALUATION

CORRECTION TO REGISTRY

Upon adjusting the value of a motor vehicle, assessors should forward an Assessors-Collectors Report of Record Change to the Registry, thereby notifying the Registry of the value which is to be subsequently assigned to that vehicle. This assigned value should be the manufacturer's list price, not the current depreciated value.

Collection Procedures

4

COLLECTION REMEDIES

Pursuant to Ch. 60A §3, a tax collector, in the collection of the motor vehicle excise, "shall have all the remedies provided by chapter sixty."

DEMAND

A prerequisite to the use of most collection remedies is the mailing of a demand. A demand must be "made more than one day after an excise becomes due and payable." Therefore, if a bill were due on February 1, the earliest a demand could properly be mailed would be February 3.

Just as with an initial excise bill, the law does not require that a demand bill be received; it requires only that demand be "made." (Ch. 60A §1 states that "failure to receive notice [of an original excise bill] shall not affect the validity of the excise. Ch. 60 §16 states, "failure to receive [a demand] shall not invalidate a tax or any proceedings for the enforcement or collection of the same.")

DEPUTY TAX COLLECTORS OR OTHER COLLECTION OFFICERS

Pursuant to Ch. 60 §92, a tax collector may appoint a deputy tax collector to assist in collecting delinquent motor vehicle excises. (See IGR 90-219 for requirements governing deputy collectors.)

ISSUANCE OF A WARRANT

If an excise bill remains unpaid for 14 days after the issuance of a demand, the tax collector may issue a warrant to a deputy collector or other officer, thereby granting authority to that person to collect the delinquent excise. The Commissioner of Revenue's prescribed warrant form is State Tax Form 266 (updated 11/92). No other form is to be used for this purpose without the ex-

press permission of the Commissioner. For the issuance of a warrant, a \$5.00 fee is added to the delinquent bill.

NOTICE OF WARRANT

A deputy tax collector or other officer who receives a warrant authorizing the collection of an overdue excise may give notice to the delinquent of the receipt of that warrant. The Commissioner of Revenue's prescribed notice form is State Tax Form 275 (updated 11/92). No other form is to be used for this purpose without the express permission of the Commissioner. For sending notice of the issuance of a warrant, a \$9.00 fee is added to the delinquent bill.

EXHIBITION OF WARRANT

If a delinquent motor vehicle excise is not paid within 30 days of the mailing of notice of the issuance of a warrant, a deputy tax collector or other officer may personally "exhibit" the warrant or leave it at the last and usual place of abode or place of business of the delinquent. Exhibiting a warrant requires an *in hand* presentation of the document either to the delinquent taxpayer, himself/herself, or to his/her representative. Leaving a copy of a warrant at the registrant's last and usual place of abode requires a *personal* delivery to the place of residence which reasonable diligence would discover to be the taxpayer's customary and most recent residence. (See IGR 89-215.) Alternatively, the delinquent may serve the delinquent, in hand, at his/her place of business.

For each service of warrant, a deputy collector or other officer must execute a Certification of Service of Warrant, State Tax Form 276, and turn that certification over to the tax collector. *A mere mailing of the warrant at this stage will not, under any circumstances, justify the imposition of the \$14.00 charge.*



For exhibiting a warrant or leaving a copy of the warrant, a \$14.00 fee is added to the delinquent bill.

USE OF A COLLECTION AGENCY

A tax collector may, also, enter into agreements with collection agencies, pursuant to G.L. Ch. 60 §2B, for the collection of delinquent excises and other taxes, except taxes on real property. Any collector who enters into such an agreement retains discretion whether to use the agency's services prior to utilizing the non-renewal procedures. If he/she chooses to issue a warrant to a collection agency, however, he/she is not subsequently obligated to have the warrant served if payment is not made within 30 days of notice of issuance of that warrant.

PARTIAL PAYMENTS

G.L. Ch. 60 of the General Laws governs and regulates the payment of local taxes. Section 22 thereof permits, with certain limitations, a person who is assessed a tax upon real estate to make a partial payment of that tax. This permissive provision is limited in application to real estate taxes. G.L. Ch. 60A, on the other hand, does not extend any corresponding authorization to persons assessed a motor vehicle excise. Therefore, a collector may properly refuse to accept a partial payment.

NON-RENEWAL OF LICENSE AND/OR REGISTRATION

Ch. 60A §2A permits a tax collector, with the assistance of the Registry of Motor Vehicles, to place in non-renewal status the license and registration of a person whose excise assessment remains unpaid for 14 or more days after the mailing of a demand. A person placed in such status will be unable to renew his/her license and registration upon their expiration until the subject excise has been paid.

PREREQUISITES TO USE OF THE NON-RENEWAL PROCESS

The Supreme Judicial Court in *Wright v. Collector and Treasurer of Arlington*, 422 Mass.

455 (1996), said, "[Ch. 60A] makes the issuance and service of a warrant a prerequisite to the notification to the Registry of Motor Vehicles." Therefore, a collector may not utilize the non-renewal process until after a warrant has been served.

TWO-YEAR LIMITATION ON PLACING MARKS

Pursuant to Registry regulations, a license or registration may not be submitted to be marked for non-renewal status more than two years after the initial excise tax issuance was made. These regulations reduce the statutory, six-year limitation set out in Ch. 60A §2A to two years for all excise bills issued after December 31, 1993 by those municipalities possessing the capability to process current transactions.

INFORMATION REQUIRED FOR PLACEMENT OF MARKS

A collector or other officer who transmits to the Registrar notice of the non-payment of an excise must include with that notice:

- The bill number.
- The bill issuance date.
- The vehicle registration number.
- The owner's name and license number.

CLEARING NON-RENEWAL MARKS

The tax collector is responsible to clear a mark whenever all monies due with respect to that mark have been paid. A mark may be cleared either through an (a) On-Line or (b) Batch Clear Transaction, made by an authorized person. To learn about developing on-line capability, see the section which follows in this manual entitled, "On-Line Access to Non-Renewal." If your community is not on line, you may periodically clear clusters of marks by sending on tape to the Registry the necessary information. The *Registry's Non-Renewal Program: Batch Processing Manual* explains how to effect batch clear transactions.

If a collector clears a mark through a Batch Clear Transaction, the mark, of course, will not be actually removed until after the batch has been transmitted to the Registry. In such

a case, the collector may issue a Certified Receipt, attesting that full payment due with respect to that mark has been made. The issuance of such a document will enable the person to renew a license or registration immediately. A collector who issues a Certified Receipt must, also, ensure that the subject mark is electronically cleared.

- Mark Relates to a Person's License

Where the non-renewal mark has been placed on a person's license, the mark should not be removed until all motor vehicle excises owed by that person on all vehicles have been paid.

- Mark Relates to the Registration of a Single Vehicle

Where the non-renewal mark has been placed on the registration of a single vehicle, the mark should be removed upon payment of the total amount due on that vehicle. The collector should not refuse to remove the mark because excises are due on other vehicles.

PERSONS WHO MAY PLACE MARKS

A collector may contract with a deputy collector, a collection agency or any other responsible party to transmit to the Registrar whatever information is necessary for the implementation and operation of the non-renewal procedure. The cost for such service may not be added to the excise tax bill of a delinquent.

IN-OFFICE ALTERNATIVES TO USE OF NON-OFFICE STAFF

A tax collector may utilize the warrant procedures without engaging the services of either a deputy collector or a collection agency by issuing a warrant to his/her assistant collector or to any other officer bonded for the receipt of municipal taxes. The collector, or any person delegated by him/her to do so, may issue a notice of warrant to a delinquent and, if the bill is not timely paid, make service of that warrant.

COLLECTOR FEES

Pursuant to G.L. Ch. 60 §15, collectors may add specific fee amounts to the excise for warrant services, as follows:

1. For the issuance and delivery of a warrant: \$5.00.
2. For mailing notice of that warrant to a delinquent: \$9.00.
3. For exhibiting that warrant to a delinquent or leaving a copy of that warrant at the last and usual residence or place of business of the delinquent: \$14.00.

These warrant fees are the property of the collector, unless the municipality has enacted a by-law, pursuant to G.L. Ch. 40 §21(13) requiring the collector to turn all fees over to the treasurer. If a warrant fee is the property of a collector, that collector may, by agreement, compensate a deputy collector or a collection agency all or part of that fee for performing the service associated with the fee. If, on the other hand, a municipality has enacted a by-law requiring the collector to turn over all fees, compensation for the services of a deputy collector or a collection agency may be made only through an appropriation. Whenever a delinquent's license and registration are placed in non-renewal status, a \$20.00 fee is assessed for the removal of that mark. The fee is added to the delinquent bill and is collected by the municipality. Upon collection, this \$20.00 shall be turned over to the municipal treasurer and deposited in the general fund. On or before September 1 of each year, the Registrar shall certify, for each city and town, the total number of accounts which had been previously marked and for which all payments due were made during the preceding fiscal year. The state treasurer will deduct \$20.00 for each such account from the amounts distributed to cities and towns on the Cherry Sheet.

The \$20.00 will not be assessed if a license or registration was marked non-renewal status by error and the mark is subsequently removed by the collector or other officer through an "error clear" transaction. Such

a transaction may be performed by checking the "error clear" box on a certified receipt or by placing a "Y" in the error field in an electronic transmission to the Registry.

If an excise bill, and related charges, are abated because the bill was sent to the wrong address due to a Registry error, the mark should be removed by the collector or other officer through an "error clear" transaction, thereby ensuring that a \$20.00 charge is not imposed.

The \$20.00 marking charge, together with the collection fees enumerated in G.L. Ch. 60 §15, constitute the only amounts which may be added to an excise. Cities and towns may *not* add to an excise any other cost incurred by them.

ON-LINE ACCESS TO NON-RENEWAL

The Registry will arrange for any municipality which so desires to obtain on-line access to the non-renewal system. A municipality may choose such access either for inquiry purposes or to make updates in the Registry's data bank.

Any municipality desiring such access should make a written request to:

Non-Renewal Program
Registry of Motor Vehicles
1135 Tremont Street
Boston, MA 02120

REFUNDS

INTEREST ON ABATEMENTS

The requirements and procedure set out in Ch. 59 §69 relative to refunds of *interest* on abated taxes do *not* apply to motor vehicle excise abatements, granted under Ch. 60A. Ch. 59 §69 states:

"A person whose tax has been abated shall, if the tax has been paid, be reimbursed by the town to the amount of the abatement allowed, including all interest and charges paid therewith. ..."

As noted earlier in this Manual in the section entitled "Refund of Interest," a municipality is liable to pay interest on a refund in the case of a motor vehicle abatement *only* when an abatement is ordered by the Appellate Tax Board or the county commissioners.

ABATEMENT OF INTEREST

At the same time, however, when a motor vehicle registrant comes to the collector's office to pay an overdue excise bill which has been partially abated, the collector should recalculate the interest due. *No interest should be assessed on that portion of the underlying excise which was abated.*

UNCOLLECTIBLE EXCISE: 60A §7

If a collector, after diligent attempts to collect a motor vehicle excise, concludes that the excise is uncollectible due to the death, absence, poverty, insolvency, bankruptcy or other inability of the assessed person to pay, the collector should so notify the assessors on oath and in writing, using State Tax Form 380A-60A-7. Upon receipt of such notification, the assessors should conduct an appropriate investigation to verify that the excise is, indeed, uncollectible. If they so find, they may abate the excise in whole or in part. They should notify the collector of their action using State Tax Form 166A-60A-7. Receipt of said notification discharges the collector from any further obligation to collect such excises.

The assessors are directed by the statute to act within 30 days of notification by the collector.

If at any future time the assessors believe that an excise, which they had earlier abated under this provision, has become collectible, they may issue a new commitment to the collector for the collection of that excise.

ANTIQUE AUTOMOBILES

Antique automobiles are defined in Ch. 90 §1 as "any vehicle over 25 years old which is maintained solely for use in exhibitions, club activities, parades and other functions of public interest and which is not used primarily for the transportation of passengers or goods over any way."

Antique automobiles may be registered under the provisions of Ch. 90 §6A.

A motor vehicle excise should be imposed in the regular manner upon a registered, antique automobile, just as if that vehicle were not an antique. The vehicle should be valued for excise purposes in accordance with the valuation formula set out in Ch. 60A §1 and discussed in Chapter 1 of this manual. The value should not be increased to actual market value.

If, on the other hand, an antique automobile is not registered, it should be assessed as personal property under the provisions of Ch. 59 §18. The value of the vehicle for such assessment should be its actual market value.

EXCISE ABATEMENT APPLICATION IS A PUBLIC RECORD

Unlike applications for abatement of real and personal property taxes, which are protected from public inspection by the provisions of Ch. 59 §60, applications for abatement of motor vehicle excises are public records. Ch. 59 §60 exempts from classification as public records only applications for abatement under Ch. 59, whereas the motor vehicle excise is levied under Ch. 60A. Therefore, State Tax Forms 126 and 126A must be disclosed to any requester at reasonable times and without unreasonable delay.

SPECIAL PLATES

Ch. 90 §5 authorizes the Registrar to issue special plates to persons engaged in the following occupations relating to motor vehicles: (1) manufacturer (2) dealer (3) repairman (4) recreational vehicle and recreational trailer dealer (5) boat and boat trailer dealer (6) farmer (7) owner-contractor (8) transporter and (9) person involved in the harvesting of forest products.

1. Manufacturers, dealers and farmers may qualify for excise exemptions on vehicles operated with special plates. (See Chapter 2.) No excise exemptions are available to persons in the other occupations on vehicles they operate with special plates.
2. Special mobile equipment operated by owner-contractors with special plates should be assessed as personal property. Ch. 90 §1 defines such equipment as "a motor vehicle which is principally designed to conduct excavations or lift building materials at a public or private construction site and is operated on a way for the sole purpose of transportation to or from said construction site and has a gross vehicle weight of at least twelve thousand pounds." Pursuant to Ch. 90 §1, vehicles which are (a) used for other purposes than transportation of property, (b) incapable of being driven at a speed exceeding twelve miles per hour and (c) used exclusively for the building, repair and maintenance of highways or designed especially for use elsewhere than on the traveled part of ways are expressly exempted from the definition of motor vehicles. Since special mobile equipment does not satisfy the definition of a motor vehicle, it cannot qualify for the excise exemption.



STATUTE OF LIMITATIONS

There is no statute of limitations upon the assessment of a motor vehicle excise in Massachusetts. At the same time, however, the usual enforcement procedures employed to collect delinquent motor vehicle excises cease to be available if not utilized in a timely fashion. For example, pursuant to G.L. Ch. 260 §2, a delinquent excise cannot be recovered in an action in contract if that action is not commenced within six years of the origin of the contract. In addition, pursuant to an amendment to G.L. Ch. 60A §2A, made by Section 29 of Ch. 151 of the Acts of 1993, a license or registration cannot be submitted to be marked non-renewal status "later than six years after the initial excise tax issuance was made." By regulation, the Registry has narrowed this period to two years for all excise bills issued after December 31, 1993 by those municipalities possessing the capability to process current transactions.

These six year limits do not begin to run in the case of any particular excise until the date the assessment is made. Therefore, if a 1996 excise were not assessed until February 1, 1998, the collector could bring an action in contract for its collection or could submit the registrant's license and registration for marking at any time on or before February 1, 2004.

MOBILE HOMES/MANUFACTURED HOUSING

IF LOCATED IN A MOBILE HOME PARK/MANUFACTURED HOUSING COMMUNITY

The owner of a mobile home (manufactured housing unit) situated in a mobile home park (manufactured housing community) is subject to a monthly license fee pursuant to Ch. 140 §32G. Such owner is only subject to the motor vehicle excise if he/she registers the mobile home.

IF NOT LOCATED IN A MOBILE HOME PARK/MANUFACTURED HOUSING COMMUNITY

The owner of a mobile home which is not situated in a mobile home park is, also, sub-

ject to the motor vehicle excise only if he/she registers the mobile home. However, if he/she does not register it, he/she is subject to a personal property tax on the mobile home.

BANKRUPTCY

AUTOMATIC STAY OF COLLECTION PROCEDURES

The filing of a petition in bankruptcy operates as an automatic stay to prohibit efforts to enforce collection of obligations of the bankrupt debtor that arose before the filing of the petition. The stay remains in effect until the case is resolved, normally by the grant of a discharge in the case of an individual debtor. While the stay is in effect, collectors and their deputies should not take any steps to collect excise bills that were committed before the filing of the bankruptcy petition. That means no demands should be issued, no notices of non-renewal of licenses should be sent to the Registry of Motor Vehicles, and no suits or other actions should be brought against the debtor while the bankruptcy litigation is pending, unless the bankruptcy court gives its permission.

DEBTS NOT DISCHARGED BY A BANKRUPT PETITION

A discharge in bankruptcy discharges certain debts; among the debts *not* discharged are taxes which were priority claims. Priority tax claims include excises on transactions occurring during the three years before the filing of the petition. We think, therefore, that motor vehicle excises for the three years preceding the filing of a petition should be treated as priority claims.

COLLECTOR SHOULD FILE PROOF OF CLAIM WITH BANKRUPTCY COURT

Although priority tax claims are exempt from discharge whether or not they were filed or allowed in the bankruptcy proceedings, a collector should file a Proof of Claim, whenever possible. This filing should be made using Bankruptcy Court Form B10.

If an excise or other tax is not accorded priority status, it will usually be subject to any

discharge granted the debtor. A discharge operates as an injunction to prohibit efforts to collect debts that have been discharged. As with the automatic stay, no demands should be issued, etc., with respect to discharged debts.

PROCEDURE WHEN A NON-RENEWAL MARK HAS BEEN PLACED PRIOR TO THE FILING OF A BANKRUPTCY PETITION

When a person whose license or registration has been marked files a petition in bankruptcy subsequent to the placement of the mark, we believe that person should not be precluded from renewing his/her license and registration for the pendency of the bankruptcy. Rather, during such pendency, when the license or any registration of the petitioner is due to be renewed, the mark should be removed, the renewal accomplished and, with the permission of the Court, the mark replaced.

MINIMUM REFUND

No refund of a motor vehicle excise may be made in an amount less than \$5.00. Therefore, if a person has overpaid his/her excise by an amount less than \$5.00, no refund may be made.

TITLE IN THE CASE OF DEATH OF A SPOUSE

Ch. 90D §15A sets out a rule whereby title to a motor vehicle owned by a decedent spouse passes on the date of death to the surviving spouse. The statute declares:

“Upon the death of a married resident owner of a motor vehicle registered as a pleasure vehicle in the commonwealth, and unless otherwise provided in a will, said motor vehicle, if used for such purpose, shall be deemed to have been jointly held property with right of survivorship and the interest of said decedent shall pass to the surviving spouse. ...”

INTERNATIONAL REGISTRATION PLAN

The International Registration Plan (IRP) is a program drafted by the American Association of Motor Vehicle Administrators to alleviate certain problems relating to trucking companies operating in interstate commerce. In the absence of this program, such companies are regulated by the several states (and/or provinces) in which they operate. Each truck must carry plates for each of these jurisdictions, creating administrative and regulatory problems for the states and provinces and for the trucking firms.

The IRP eliminates the necessity for multiple plates. Instead, under its provisions each trucking company may register its vehicles only in its “base jurisdiction.” A company’s base jurisdiction is that place “where the registrant has an established place of business, where mileage is accrued by the fleet and where operational records of such fleet are maintained or can be made available. ...” IRP, Art. II §210.

A vehicle registered under the IRP may operate with only one registration plate. Registration fees for that plate are apportioned to all of the states (and/or provinces) in which the vehicle operates, according to a formula based on the miles traveled in each jurisdiction and on the jurisdiction’s rate formula.

The International Registration Plan does not possess any independent force of law. To be effective, it must be adopted by the legislature of each signatory state or province. In 1990, with an amendment to G.L. Ch. 90 §2, the Massachusetts Legislature authorized the Registrar of Motor Vehicles “to enter into reciprocal agreements on behalf of the commonwealth ... to enter into and become a member of the International Registration Plan.” Massachusetts officially entered the plan on January 1, 1994.

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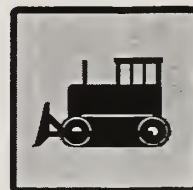
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